

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KENNETH S. CHAFFIN and TIFFANY CHAFFIN,

Plaintiffs,

vs.

Case No.

BHP BILLITON (f/k/a BROKEN HILLS PROPRIETARY
COMPANY LIMITED and a/k/a BHP BILLITON LIMITED
Or BHP BILLITON GROUP), BILLITON, PLC (a/k/a BHP
BILLITON, PLC), BHP BILLITON MINE MANAGEMENT
COMPANY, BHP BILLITON NEW MEXICO COAL, INC.,
RUDI HAGRYN, and RYAN WAGGONER,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, all Defendants, by and through counsel, the Modrall Sperling law firm (Brian K. Nichols and Mia K. Lardy), hereby removes the above-captioned case from the First Judicial District Court for the State of New Mexico, Santa Fe County, to the United States District Court for the District of New Mexico. In support thereof, Defendants state as follows:

GROUND FOR REMOVAL – FEDERAL QUESTION

1. On March 22, 2018, Plaintiff commenced this action against Defendants by filing a Complaint in the First Judicial District Court, County of Santa Fe, State of New Mexico, assigned case number D-101-CV-2018-00769. On May 22, 2018, the Complaint was served on BHP Billiton Mine Management Co. and BHP Billiton New Mexico Coal Co., Inc. at the office of their registered agent. Then, on June 1, 2018, Plaintiffs filed a First Amended Complaint. True and correct copies of all pleadings and papers filed and served in the state action are attached hereto as Exhibit A. Service has been accepted by counsel for all other Defendants.

2. Under 28 U.S.C. § 1441, a defendant in state court may remove the case to federal court when a federal court would have had jurisdiction if the case had been filed there originally. *Topeka Hous. Auth. v. Johnson*, 404 F.3d 1245, 1247 (10th Cir. 2005).

3. One category of cases over which the district courts have original jurisdiction is “federal question” cases, meaning those cases “arising under the Constitution, laws, or treaties of the United States.” *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63, (1987) (quoting 28 U.S.C. § 1331).

4. Federal question jurisdiction exists when “a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983).

5. Plaintiff asserts claims against BHP Billiton Mine Management Co. and BHP Billiton New Mexico Coal Co., Inc. for alleged violations of the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.* along with other New Mexico common law claims. *See* Exhibit A, Complaint ¶ 1.

6. Because Plaintiff asserts claims arising under federal law, this Court has original jurisdiction under 28 U.S.C. § 1331. BHP Billiton Mine Management Co. and BHP Billiton New Mexico Coal Co., Inc. may remove this action pursuant to 28 U.S.C. § 1441(a) because it arises under federal law, presents a federal question, and is controlled by federal law. All Defendants consent to removal.

7. Once federal question jurisdiction exists, the district court may exercise supplemental jurisdiction over “state law claims that derive from a common nucleus of fact.” *United Int’l Holdings, Inc. v. Wharf (Holdings) Ltd.*, 210 F.3d 1207, 1220 (10th Cir. 2000).

Plaintiff also asserts state law claims in this case under the New Mexico Human Rights Act, NMSA 1978 § 28-1-1 *et seq.* (2007), as well as New Mexico common law claims. *See* Exhibit A, Complaint ¶ 11. These state law claims are based on the same set of operative facts, and form part of the same case or controversy, as Plaintiff's federal claims. *See, e.g.,* Exhibit A, Complaint, ¶¶ 12-61. Therefore, this Court has supplemental jurisdiction over any such claims pursuant to 28 U.S.C. § 1367(a), and they are properly removable under 28 U.S.C. § 1441(c).

8. No responsive pleadings to the Complaint have been filed in the state court action.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because it is the District Court and division embracing the place where this action is pending.

TIMELINESS OF REMOVAL

10. The Complaint was served on BHP Billiton Mine Management Co. and BHP Billiton New Mexico Coal Co., Inc. on May 22, 2018. *See* Exhibit A. Plaintiff's First Amended Complaint was then filed June 1, 2018.

11. This notice is filed with the Court within thirty (30) days after the date of service of Plaintiff's Complaint. Accordingly, removal of this action is timely pursuant to 28 U.S.C. § 1446(b) and *Murphy Bros., Inc. v Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348-49 (1999).

NOTICES

12. A copy of this notice is being filed with the Clerk of the First Judicial District Court, County of Santa Fe, New Mexico, and has been served on Plaintiff in accordance with 28 U.S.C. § 1446(d). A copy of the notice provided to the state court (without exhibits) is attached to this notice as Exhibit B.

13. Pursuant to D.N.M.LR-Civ. 81.1, to the extent not already provided via this Notice, BHP Billiton Mine Management Co. and BHP Billiton New Mexico Coal Co., Inc. will

file with the Clerk of the United States District Court for the District of New Mexico, legible copies of all records and proceedings from the state court action within twenty-eight days after filing this Notice of Removal.

WHEREFORE, for the above-stated reasons, Defendants respectfully remove this action from the First Judicial District Court, County of Santa Fe, New Mexico to the United States District Court for the District of New Mexico.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: /s/Mia K. Lardy

Brian K. Nichols (bkn@modrall.com)

Mia K. Lardy (mlk@modrall.com)

Attorneys for BHP Billiton Mine Management Co. and
BHP Billiton New Mexico Coal Co.

Post Office Box 2168

Albuquerque, New Mexico 87103-2168

Telephone: 505.848.1800

I HEREBY CERTIFY that on the 5th day of June, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing, and by email to:

Trent A. Howell

P.O. Box 2304

Santa Fe, NM 87504

Trent@trentahowell.com

505-919-9158

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: /s/ Mia K. Lardy
Mia K. Lardy

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